

IT 95-37

Tax Type: INCOME TAX

Issue: Unreported/Underreported Income (Fraud Application)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

XXXXXX

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Mary Gilhooly Japlon

Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before this tribunal as a result of a timely protest by XXXXX (hereinafter referred to as the "taxpayer") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to her on September 30, 1994. The basis of this Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that she failed to file an Illinois Income Tax Return for the year ending December 31, 1990 (hereinafter referred to as the "Taxable Year"). The Notice proposed the assessment of tax, various penalties and interest for income earned that year.

In her protest to the Notice of Deficiency, this taxpayer asserted that she did not reside in Illinois during 1990. Furthermore, the taxpayer did not request a formal hearing in this matter. Therefore, the following issue is being heard on the information provided by the taxpayer in her protest and subsequent thereto: whether the taxpayer has overcome the prima facie correctness of the Notice of Deficiency with sufficient evidence to show that she was not a resident of Illinois during the year 1990, or that she did not earn income in the State during that year.

Following a review of the documentation, it is recommended that this matter be resolved in favor of the taxpayer.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, is established by the Notice of Deficiency which was issued to the taxpayer on September 30, 1994. (Dept. Ex. No. 1).

2. The basis of the Notice was that the taxpayer failed to file an Illinois income tax return for the year ending December 30, 1990. (Dept. Ex. No. 1).

3. The Notice showed a tax and penalty amount of \$546.00. (Dept. Ex. No. 1).

4. Penalties proposed to be assessed were for failure to file a timely income tax return as statutorily required, failure to timely pay the income tax liability and failure to make timely estimated income tax payments. (Dept. Ex. No. 1).

5. The taxpayer timely protested the Notice. (Dept. Ex. No. 2).

6. The documentation submitted by the taxpayer indicates that during 1990 she was not a resident of this State and did not earn income in this State.

CONCLUSIONS OF LAW: The Illinois Income Tax Act, 35 ILCS 5/101 et seq. provides, inter alia, that Illinois residents and part-time residents shall file pertinent returns with the State showing all items of income allocated for the period of residency. 35 ILCS 3/301. The Department claimed, as the basis of its Notice, that the taxpayer resided in Illinois for the year 1990.

In her protest, the taxpayer advised that she lived and worked outside of Illinois during 1990. The documentation she submitted verified this assertion.

Based upon the foregoing, it is my recommendation that the Notice of Deficiency at issue herein be cancelled.

Administrative Law Judge
Mary Gilhooly Japlon